re-entering the field. The vendor did come back, but in starting a new business conducted himself in such a manner as to destroy any good will which the vendee may have purchased. Yet the Court seemed to take the attitude that the mere act of returning was sufficient ground for their interference. It is submitted that the authorities upon which they base their decision[13] do not warrant such a conclusion.

Whether or not a man engaged in the occupation of a chiropodist can be said to be pursuing a profession seems of little importance, since the Court assumed for the purposes of the decision that there were sufficient characteristics and features involved in the work to warrant the distinction from a trade.

The decisions in direct point are few[14] and though the relief granted here is in accordance with the results of similar cases,[15] it is submitted that the reasoning of the Court is not borne out by the weight of opinion. The result, though a just and equitable one, opens up a wide latitude in which unwarranted conclusions may often be reached.

W. A. W., 2nd.

LEGAL ETHICS—QUESTIONS AND ANSWERS—Two more questions in legal ethics were answered by the New York County Lawyers' Association Committee on Professional Ethics, at its meeting of October 31st, 1912:

QUESTION:

May I know whether in the opinion of your Committee it would be unprofessional for an attorney, who is the counsel for an association, to send out letters to a number of its members suggesting employment upon an annual retainer?

ANSWER:

In the opinion of the Committee it is desirable that such solicitation of business should be discouraged; the Committee deems it unprofessional.

QUESTION:

Over a year ago a client, whom we had represented for some time, introduced to us a Mr. X, who requested us to represent him in various matters. Our relations continued on a pleasant basis for a period of several months, during which time we undertook litigation in various Courts for X.

About three months ago, we informed X that we would no longer be able to act as his attorneys, unless he paid us for our services. Mr. X, who originally paid us a retainer of $200, agreed that we were entitled to receive a sum of several times that amount for services performed to the then date, and stated that he would arrange to let us have a check in a few days.

Since that time, Mr. X has studiously avoided our office and ignored all communications. We appear as attorneys for him in a number of litigated

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[13] Bagly & Rivers Co. v. Rivers, 87 Md. 401 (1898); Yeakley v. Gaston, 50 Texas Civil App. 405 (1908): in this case the good will had not been sold and what the Court said in regard to covenants not to re-enter being implied was *dictum*.

[14] Angier v. Webber, 14 Allen, 211 (1867), in which case there was an express covenant.

[15] Dwight v. Hamilton, *supra*.

matters. We do not desire to continue to represent a client of this type. We have requested him to have other attorneys substituted in our place, but he has paid no attention to our requests. We wish to drop all of his matters, but we do not wish to be accused of having been unfaithful to the trust originally reposed in us as attorneys by this client.

We would appreciate advice from you as to the manner in which we should proceed in order to be permitted to cease acting as his attorneys.

ANSWER:

Upon the facts as stated, the Committee does not consider that the attorneys are required by any professional obligation to continue to represent the client; it is of the opinion that a peremptory notice to the client that after a certain specified date, sufficiently far away to enable him to secure and substitute new attorneys, they will not act as his attorneys, is proper. This answer, however, does not deal with the attorney's legal right to compensation upon taking such course, nor with the legal procedure essential thereto.

PARTNERSHIPS—LIABILITY FOR TORT—MARSHALLING ASSETS—The right of a creditor holding a joint and several claim against the members of an insolvent firm, to share in the partnership and individual assets under concurrent general and separate assignments, was fully recognized in a recent, highly interesting New York case.[1] A judgment recovered in a tort action against "Girard N. Whitney and James V. Geraghty, co-partners, doing business under the firm name and style of Whitney and Kitchen," was held conclusive evidence of a creditor's claim, and binding as such on the assignee, who was directed to pay dividends on it from both the firm and individual assets.

The recovery of a judgment, whether in tort or upon a contract, establishes a debt which the defendant is under obligation to pay, the law implying a promise or contract on his part to pay it.[2] And this is true whether the judgment is recovered against the co-partners before assignment, or against the co-partners and the assignee after assignment.[3] Such debt being properly established, the only question of importance to be considered in connection with the marshalling of assets, is whether it is joint or joint and several.

The joint and several liability of co-tort-feasors and the attendant right, upon recovery of a judgment, to complete satisfaction by levy upon both the joint and several property is as old as the common law itself; and practically as old as the first recognized partnership is the doctrine that upon the commission of a tort by the partnership or by any single member—within certain limitations—the individuals comprising such partnership

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[1] *In re* Peck, 99 N. E. Rep. 258 (N. Y., 1912).

[2] Gutta Percha Co. v. Mayor of Houston, 108 N. Y. 278 (1888). But see Louisiana v. Mayor of New Orleans, 109 U. S. 285 (1883), holding that a judgment recovered upon an action in tort cannot be considered as a contractual obligation within the meaning of that clause of the Federal Constitution which prohibits the various States from passing any law "impairing the obligation of a contract."

[3] Ludington's Petition, 5 Abb. N. C. 322 (N. Y., 1878). The same is true in cases of bankruptcy. Collier on Bankruptcy, 4th Edit., page 449.